OLC 78-2002/E

THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D. C. 20505

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Office of Legislative Counsel

14 June 1978 OMB

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

Officers from the Office of Management and Budget recently met with representatives of various agencies and departments, including representatives of the Director of Central Intelligence, to discuss development of Administration positions on provisions in the "Foreign Relations Authorization Act, Fiscal Year 1979," S. 3076 and H.R. 12598. Pursuant to those discussions, I am enclosing proposed Administration positions on sections 119 and 501 of S. 3076 and Title V of H.R. 12598. Insofar as these positions reflect the views of the Central Intelligence Agency, they are consistent with the letter to you from Deputy Director Carlucci dated 25 May 1978. I have included also a proposed letter to transmit the final compilation of Administration views to the Congress.

It is my understanding that the full Senate may consider S. 3076 later this month. Although the Administration views and recommendations are likely to be particularly important in the context of Conference deliberations on the bills, they should be transmitted to the Senate prior to floor action. We therefore stand ready to assist in the coordination and final preparation of this material, both as regards the specific provisions cited above as well as other provisions, as necessary. We request that these materials be coordinated with all other agencies and departments involved in activities or operations abroad, including, for example, the Internal Revenue Service, and the Departments of Treasury and Justice.

Sincerely,

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Acting Legislative Counsel

Enclosures

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VIEWS OF THE ADMINISTRATION ON THE "FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1979," S. 3076

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SECTION 119--"AUTHORITY AND RESPONSIBILITY OF UNITED STATES CHIEFS OF MISSION"

The Report of the Committee on Foreign Relations on S. 3076 (Report No. 95-842, May 15, 1978) indicates, at pages 17-18, that section 119 is intended to make clear that paragraph 102(d)(3) of the National Security Act of 1947, as amended (50 U.S.C. 403), should not, by itself, operate to deny to a U.S. Ambassador access to any information--in this instance information relating to intelligence sources and methods--to which, in the view of the President, he should have access. Paragraph 102(d)(3) of the National Security Act, cited above, provides, among other things, that it is the responsibility of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. Section 119 of S. 3076 would amend paragraph (3) of 22 U.S.C. 2680a, the so-called "Role of the Ambassador" legislation, by inserting therein the words "notwithstanding any other provision of law."

The Administration opposes enactment of section 119, on the grounds that it is unnecessary for the purposes intended, and because it therefore needlessly appears to supersede the authority of the Director of Central Intelligence under 50 U.S.C. 403(d)(3). There is no dispute within the Executive Branch that U.S. Chiefs of Mission should receive full access to all information necessary for them to carry out their duties as representatives of the President. The current statutory formulation, 22 U.S.C. 2680a, recognizes this by requiring that a U.S. Ambassador shall be kept "fully and currently informed" of all activities and operations conducted by any U.S. department or agency in that country. In recognition of the status of the President and of the U.S. Chief of Mission as the President's representative in a foreign country, 22 U.S.C. 2680a provides, as a prefatory proviso, that the authorities and responsibilities of U.S. Ambassadors shall be carried out "Under the direction of the President--." The Administration believes this language provides the appropriate statutory formulation for U.S. Chiefs of Mission to seek information necessary to carry out their responsibilities.

Amending 22 U.S.C. 2680a as proposed by section 119 of S. 3076, particularly in light of the Report language referenced above, raises an issue that is not in dispute--U.S. Chiefs of Mission, operating under the President's direction are and should receive access to all information necessary to carry out their duties--and needlessly raises potential questions concerning the responsibilities of the Director of Central Intelligence. If there are other purposes to which section 119 is or, in the view of the Congress, should be addressed, the Administration would welcome the opportunity to discuss these with the appropriate committees.

Finally, the phrase "notwithstanding any other provision of law," could be construed as superseding other legislation, such as the Privacy Act, or legal requirements designed to ensure that information affecting the privacy interest of U.S. persons is disseminated to Government officials only in appropriate circumstances.

The Administration opposes enactment in its present form of section 119 of S. 3076.

* * *

SECTION 501--"COORDINATION AND REPORTING OF INTERNATIONAL AGREEMENTS"

Section 501 of S. 3076 concerns the determination and reporting of "international agreements" pursuant to the so-called "Case/Zablocki Act" (1 U.S.C. 112b). Among other things, section 501 would amend 1 U.S.C. 112b by providing as follows:

1. Oral agreements would have to be reduced to writing and thereafter reported to the Congress if determined to be "international agreements" (proposed subsection (a)).

2. No "international agreement" could be signed or concluded without the prior approval of the Secretary of State or the President (proposed paragraph (c)(1)).

3. Rules and regulations necessary to carry out the Case/Zablocki Act shall be issued by the President, through the Secretary of State (proposed subsection (d)).

The Administration opposes amending the Case/Zablocki Act to require that oral agreements be reduced to writing and reported as international agreements. Such a statutory requirement would pose serious practical burdens not only for the Department of State but for all other agencies and departments as well. This problem would result from the difficulty inherent in determining what activities or arrangements must be reduced to writing, and from the fact that numbers of such matters that would have to be so considered in order to determine whether they constitute international agreements, would be extremely large. This provision in section 501 of S. 3076 is unnecessary and would prove unacceptably burdensome in practice.

The provision in section 501 of S. 3076 that relates to oral agreements, moreover, could have a serious negative impact on intelligence activities, conducted pursuant to the authorities of the Director of Central Intelligence, involving liaison relationships with foreign intelligence or security services. This impact could extend to the ability of the Government to maintain such authorized relationships and of the corresponding willingness of foreign entities to deal with the U.S. Such relationships, which are strictly intelligence matters, are among the most sensitive matters conducted by the Central Intelligence Agency, and depend in the first instance on the very fact of their existence remaining tightly confidential. A statutory requirement that such relationships be reduced to writing and reported outside confidential intelligence channels would be detrimental to the best interests of the national security.

The Administration also is concerned with those provisions in section 501 requiring the prior approval of agreements by the Secretary of State or the President. Insofar as concerns intelligence matters conducted pursuant to the authorities of the Director of Central Intelligence, requiring prior approval by the Secretary of State is inappropriate. Moreover, the alternative of placing a statutory burden on the President for reviewing and approving intelligence activities conducted by the CIA which, in the first instance is under the National Security Council, of which the President is a member (50 U.S.C. 402-403), is unnecessary and inappropriate. Also, it is inappropriate, as provided in proposed subsection (b), that the President be burdened with a statutory requirement to report in detail and in writing annually to the Congress, merely to inform the Congress that certain agreements were transmitted "late."

As to proposed subsection (d) in section 501 of S. 3076, providing that the President shall issue rules and regulations to implement 1 U.S.C. 112b inappropriately specifies that this shall be done "through the Secretary of State." This additional provision is unnecessary and could lead to confusion as to the ultimate responsibility of the President to issue the relevant rules and regulations in consultation with, or as delegated to, those of his officers as he deems appropriate, not necessarily limited to the Secretary of State.

For these reasons, the Administration opposes enactment of section 501 of S. 3076.

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VIEWS OF THE ADMINISTRATION ON THE "FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1979," H.R. 12598

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TITLE V -- "SCIENCE, TECHNOLOGY, AND AMERICAN DIPLOMACY"

* * *

Subsection 503(c) provides that information relating to intelligence sources and methods shall be protected against disclosure. The Report of the Committee on International Relations explains, at page 37, that this subsection is intended to make clear that intelligence sources and methods "are not intended to come under the provisions of this title" (Report No. 95-1160, May 15, 1978). In order to more clearly reflect the intent that intelligence matters are not within the purview of Title V, a view the Administration supports, it is recommended that subsection 503(c) of H.R. 12598 be amended to read as follows (language to be added is underscored; language to be deleted is stricken through):

> "(c) Except as otherwise provided by law, nothing in this ~~section~~ title shall be construed as requiring the ~~public~~ disclosure of sensitive information relating to intelligence sources or methods or to persons engaged in monitoring scientific or technological developments for intelligence purposes."

The report accompanying this legislation should include the following language with respect to subsection 503(c): "Section 503(c) makes clear that intelligence matters, including agreements with foreign intelligence or internal security services, do not come within the provisions of this title."

DRAFT

Honorable John Sparkman, Chairman
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the Administration, I would like to present to you views on S. 3076, the "Foreign Relations Authorization Act, Fiscal Year 1979," which is awaiting floor action. Several provisions in this legislation are of serious concern to us. I have enclosed a paper detailing these concerns and recommending certain amendments; these represent the views and recommendations of several departments and agencies with equities in this legislation. I have included also views on Title V of H.R. 12598, the companion bill which passed the House on 31 May 1978. This title, "Science, Technology, and American Diplomacy," does not appear in S. 3076, but since it is in the House bill, I believe it is appropriate to address it in conjunction with other provisions in S. 3076.

We would be most happy to arrange to provide your Committee with additional information on these matters, either before the full Senate considers the bill, or at such time as the Conference considers the legislation.

Thank you for your interest.

Sincerely,

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Enclosures